

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-221438.2 **DATE:** April 13, 1986  
**MATTER OF:** Sun Enterprises

## DIGEST:

1. Protester fails to meet burden of proving that the contracting agency improperly rejected its offer of an allegedly identical radiator to the one specified in the solicitation where the protester presents no evidence to refute the agency's assertion that the offered radiator was dimensionally different from the specified one.
2. There is no requirement for the contracting agency to conduct discussions with offerors of technically unacceptable proposals.
3. GAO's Bid Protest Regulations do not contemplate the piecemeal presentation of arguments or information relating to a protest, and it is incumbent upon a protester raising one basis of protest to diligently pursue information pertinent to the protest as well as information that reasonably would be expected to reveal additional bases for protest. Where the record does not indicate the protester diligently pursued such information, allegations raised after the receipt of the agency report and more than 2 months after the filing of the initial protest are untimely.

Sun Enterprises protests the rejection of its proposal under request for proposals (RFP) No. DLA700-85-R-1658 issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC). The RFP was for 901 radiator assemblies, with an option to acquire 50 percent more, that were either a specified General Motors Corporation product or a product that was physically, mechanically, and functionally interchangeable with the specified product.

We deny the protest in part and dismiss it in part.

Sun filed its protest with this Office on December 19, 1985, after reading the announcement of an award to another offeror in the Commerce Business Daily dated December 12. Sun stated that it had proposed to supply an allegedly identical part--Daniel Radiator Corporation's part No. 452003, detailed in blueprint D-0161R included with the proposal. Subsequently, by letter dated January 21, 1986, the protester complained that DCSC had failed to conduct discussions with it.

Sun received the contracting agency's report on February 10. The report explained that DCSC rejected Sun's proposal offering an allegedly identical product because the blueprint for the product indicated that Sun's offered radiator had different dimensions than the specified radiator.

The protester timely filed comments within 7 working days after its receipt of the report. See 4 C.F.R. § 21.3(e) (1985). The comments did not dispute DCSC's assertion that the Daniel Radiator product was dimensionally different from the General Motors radiator specified in the RFP, but for the first time alleged that the awardee's proposal should not have been accepted because it deviated from the RFP's delivery requirements. One day after the expiration of the period for filing comments on the agency report, Sun filed a mailgram alleging for the first time that DCSC evaluated the wrong blueprint.

The protester bears the burden of submitting sufficient evidence to prove its case, and this burden is not met where the only evidence is the protester's self-serving statements which conflict with the agency's report. Motorola, Inc., B-218888.3, Aug. 22, 1985, 85-2 CPD ¶ 211. Since Sun merely alleges that its offered radiator was identical to the radiator specified in the RFP, without specifically contesting the agency's assertion that the offered radiator is dimensionally different, the protester has failed to meet its burden of proof and we deny this aspect of the protest. It follows that the agency had no obligation to conduct discussions with Sun since agencies are not required to conduct discussions with offerors of proposals that are technically unacceptable. Instructional Development Corp.--Request for Reconsideration, B-220935.4, Dec. 13, 1985, 85-2 CPD ¶ 664. This aspect of the protest is denied.

Sun's allegation that DCSC evaluated the wrong blueprint is untimely regardless of whether it is considered additional information supporting Sun's original protest or as a new basis for protest. The protester alleges that on February 13, 1986, it called the DCSC representative who performed the evaluation and discovered in the course of the conversation that the representative evaluated the wrong blueprint. The protester brought this to our attention by a mailgram dated February 13 and received by our Office on February 20--1 day after the last day for submitting comments on the agency report. Our Bid Protest Regulations require the filing (receipt) of information pertaining to a protest within 7 working days after the protester's receipt of the agency report, except under exceptional and rare circumstances where, unlike here, this Office has expressly granted an extension. See 4 C.F.R. §§ 21.2(b) and 21.3(e). Our regulations do not contemplate the piecemeal presentation of arguments or information relating to a protest. Beech Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 CPD ¶ 694.

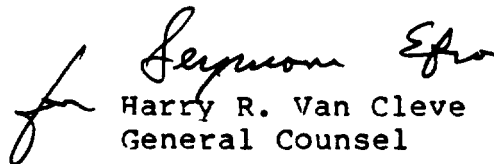
To the extent that the allegation raises recently discovered information forming a new basis for protest, it must independently satisfy our timeliness requirements. Id. In this regard, our Bid Protest Regulations provide that a protest of an agency's evaluation must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our Bid Protest Regulations were designed to provide equitable procedural standards so that all parties have a fair opportunity to present their cases and have them expeditiously resolved without unduly disrupting or delaying the procurement process. See Hartridge Equipment Corp.--Request for Reconsideration, B-219982, Oct. 17, 1985, 85-2 CPD ¶ 418. It therefore is incumbent upon the protester to diligently seek pertinent information needed to determine whether a basis for protest exists. Hugo Auchter GmbH, B-217400, July 22, 1985, 85-2 CPD ¶ 64.

The record does not indicate that Sun made any attempt to ascertain precisely why its offered product had been evaluated as being unacceptable during a period of more than 2 months after the date of the Commerce Business Daily announcement on December 12, 1985, until February 13, 1986, when Sun allegedly called DCSC. We therefore find that Sun did not diligently pursue this basis for protest. See Knox Mfg. Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281. We further point out that Sun also failed to file a copy of the allegation with the contracting agency as required by our Bid Protest Regulations. 4 C.F.R. § 21.1(d).

We therefore dismiss the untimely filed allegation that the agency evaluated the wrong drawing.

Finally, as regards the allegation that the awardee's proposal deviated from the RFP's delivery requirements, this allegation was first raised approximately 2 months after the protester learned of the award and apparently was based on the documentation in the agency report. Protesters challenging an award or proposed award on one basis should diligently pursue information that reasonably would be expected to reveal any additional bases of protest and not merely await the agency report. See S.A.F.E. Export Corp., B-213026, Feb. 10, 1984, 84-1 CPD ¶ 165. In this case, that would have entailed simply requesting a copy of the awarded contract. Moreover, Sun is not an interested party to object to the awardee's delivery schedule, since Sun's technically unacceptable proposal was ineligible for an award in any event and there was another eligible proposal that offered the specified General Motors radiator in conformance with the RFP's delivery requirements. See Boston Intertech Group, Ltd., B-220045, Dec. 13, 1985, 85-2 CPD ¶ 657. We therefore dismiss this aspect of the protest.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel